

Smoking (Public Health) (Amendment) Bill 2019

Draft committee stage amendments proposed by the Government

The summary and the draft wording of the committee stage amendments to the Smoking (Public Health) (Amendment) Bill 2019 proposed by the Government are at Annex A and Annex B respectively. The mark up copy is at Annex C.

Food and Health Bureau
September 2021

**Proposed Committee Stage Amendments
to the Smoking (Public Health) (Amendment) Bill 2019 (“the Bill”)**

	Provisions to be amended	Brief description of the amendments
1.	Clause 5 of the Bill - Section 3(2A) of the Smoking (Public Health) Ordinance (Cap. 371)	To substitute “他吸煙” with “該人吸用” in the Chinese text “如任何人根據附表 5 獲豁免而不受第(2)款的規限，則該款並不阻止 <u>他吸煙</u> 或攜帶燃着的香煙、雪茄或煙斗” to align with the definition of “conventional smoking act (傳統吸煙行為)” in the amended Schedule 5.
2.	Clause 21 of the Bill - Section 15A(3)(a) of Cap. 371	To substitute “任何人不得接受或要約接受換物憑證作為交換，而將傳統吸煙產品售賣或給予任何其他人” with “任何人不得將(或要約將)傳統吸煙產品售賣予或將傳統吸煙產品給予任何其他人，以換取換物憑證；” under the Chinese text to align with the English text “no person shall sell, offer for sale or give a conventional smoking product to any person in exchange for a token”.
3.	Clause 23 of the Bill -Section 15DB	<p>In addition to bodies corporate, to provide that if a partner in a partnership or a member of any other unincorporated body commits an offence under the proposed new section 15DA(4) of Cap. 371, and the offence was committed with the consent or connivance of an officer of the partnership or unincorporated body or is attributable to any neglect on the part of such an officer, the officer also commits the offence. It is to impose the same level of control over various alternative smoking product businesses.</p> <p>Similar provisions have been adopted under existing Ordinances, e.g. section 100 of the Private Columbaria Ordinance (Cap. 630).</p>
4.	Clause 23 of the Bill - Section 15DG(2)	To provide expressly that the power of an inspector to detain a person pursuant to the proposed section is only for a reasonable period.

5.	Clause 23 of the Bill -Section 15DH(2)	To amend the Chinese text from “第(1)(a)條” to “第(1)(a)款”.
6.	Clause 23 of the Bill -Section 15DH(4)	To substitute “seized” with “seized, removed or detained” under the proposed section to align with section 15DH(3) as both sections deal with seizure, removal or detention of alternative smoking products.
7.	Clause 23 of the Bill -Section 15DH(5)(a)	To provide expressly that the power of an inspector to detain a person pursuant to the proposed section is only for a reasonable period.

Smoking (Public Health) (Amendment) Bill 2019

Committee Stage

Amendments to be moved by the Secretary for Food and Health

Clause

Amendment Proposed

5

By adding—

“(1A) Section 3(2A), Chinese text—

Repeal

“他吸煙”

Substitute

“該人吸用”.

21

In the Chinese text, by deleting subclause (2) and substituting—

“(2) 第 15A(3)(a)條 ——

廢除

在“得將”之後的所有字句

代以

“(或要約將)傳統吸煙產品售賣予或將傳統吸煙產品給予任何其他人，以換取換物憑證；”。

23

By deleting the proposed section 15DB and substituting—

“15DB. Liability of officers of bodies corporate, partners and members of unincorporated bodies

- (1) If a body corporate commits an offence under section 15DA(4), and it is proved that the offence—
 - (a) was committed with the consent or connivance of a person specified in subsection (2); or
 - (b) is attributable to any neglect on the part of the person,

the person also commits the offence.

- (2) The person referred to in subsection (1) is—
 - (a) a director, manager, secretary or other similar officer of the body corporate; or
 - (b) a person purporting to act in the capacity of a person referred to in paragraph (a).
- (3) If a partner in a partnership commits an offence under section 15DA(4), and it is proved that the offence—
 - (a) was committed with the consent or connivance of a person specified in subsection (4); or
 - (b) is attributable to any neglect on the part of the person, the person also commits the offence.
- (4) The person referred to in subsection (3) is—
 - (a) any other partner in the partnership or any other person concerned in the management of the partnership; or
 - (b) a person purporting to act in the capacity of a person referred to in paragraph (a).
- (5) If a member of any other unincorporated body commits an offence under section 15DA(4), and it is proved that the offence—
 - (a) was committed with the consent or connivance of a person specified in subsection (6); or
 - (b) is attributable to any neglect on the part of the person, the person also commits the offence.
- (6) The person referred to in subsection (5) is—
 - (a) any other member, or any manager, secretary or other similar officer, of the unincorporated body; or
 - (b) a person purporting to act in the capacity of a person referred to in paragraph (a).".

- 23 In the proposed section 15DH(2), in the Chinese text, by deleting “條” and substituting “款”.
- 23 In the proposed section 15DH(4), by adding “, removed or detained” after “seized”.
- 23 In the proposed section 15DH(5)(a), by adding “for a reasonable period” after “person”.

Smoking (Public Health) (Amendment) Bill 2019

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Smoking (Public Health) (Amendment) Bill 2019

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A BILL

To

Amend the Smoking (Public Health) Ordinance to prohibit the import, manufacture or sale, or use in certain places, of prescribed alternative smoking products; to restrict the giving, possession, advertising or promotion of the products; and to make related and miscellaneous amendments to the Ordinance and related legislation.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Smoking (Public Health) (Amendment) Ordinance 2019.
- (2) This Ordinance comes into operation on the expiry of 6 months after the day on which this Ordinance is published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Smoking (Public Health) Ordinance (Cap. 371)

3. Long title amended

The long title—

Repeal

everything after “in certain” and before “to provide for the appointment”

Substitute

“places; to provide for the display of a health warning and other information on packets or retail containers of conventional smoking products; to restrict the advertising of smoking products; to restrict the sale, giving or promotion of conventional smoking products; to prohibit the import, manufacture or sale, and to restrict the giving, possession or promotion, of alternative smoking products;”.

4. Section 2 amended (interpretation)

(1) Section 2—

Renumber the section as section 2(1).

(2) Section 2(1), definition of *cigar*—

Repeal

“smoking;”

Substitute

“smoking, but does not include any alternative smoking product;”.

(3) Section 2(1), definition of *cigarette*—

Repeal

“smoking;”

Substitute

“smoking, but does not include any alternative smoking product;”.

- (4) Section 2(1), definition of *cigarette tobacco*—

Repeal

“his own use;”

Substitute

“the purchaser’s own use, but does not include any alternative smoking product;”.

- (5) Section 2(1), definition of *pipe*—

Repeal

“cigar;”

Substitute

“cigar, but does not include any alternative smoking product;”.

- (6) Section 2(1), definition of *pipe tobacco*—

Repeal

“pipe;”

Substitute

“pipe, but does not include any alternative smoking product;”.

- (7) Section 2(1), Chinese text, definition of *牌子*—

Repeal

“品質”

Substitute

“特質”.

(8) Section 2(1)—

- (a) definition of *smoke*;
- (b) definition of *tobacco advertisement*;
- (c) definition of *tobacco product*—

Repeal the definitions.

(9) Section 2(1)—

Add in alphabetical order

“*activated* (已啟動)—see subsection (2);

aerosol (氣霧) means—

- (a) any gas;
- (b) any solid particles, or liquid, suspended in air; or
- (c) any mixture of the substances mentioned in paragraphs (a) and (b);

Note—

Smoke is a form of aerosol as defined above.

alternative smoking product (另類吸煙產品) means a product set out in Part 2 of Schedule 7;

cease (停止), in relation to a smoking act—see subsection (3);

conventional smoking product (傳統吸煙產品) means any cigarette, cigarette tobacco, cigar or pipe tobacco;

deactivate (熄掉)—see subsection (4);

Government Chemist (政府化驗師) has the meaning given by section 2 of the Evidence Ordinance (Cap. 8);

smoking (吸煙、吸用) means inhaling and expelling—

- (a) in relation to a conventional smoking product—the smoke of tobacco generated from the product; or
- (b) in relation to an alternative smoking product—the aerosol generated by or from the product;

smoking act (吸煙行為) means smoking or carrying—

- (a) a lighted cigarette, cigar or pipe; or
- (b) an activated alternative smoking product;

Note—

See also subsections (2), (3) and (4).

smoking product (吸煙產品) means—

- (a) a conventional smoking product; or
- (b) an alternative smoking product;

smoking product advertisement (吸煙產品廣告)—see section 14.”.

(10) After section 2(1)—

Add

- “(2) An alternative smoking product is ***activated*** if any process, such as combustion or heating, is taking place for generating an aerosol by or from the product.
- (3) A person ***ceases*** a smoking act—
 - (a) in relation to a lighted cigarette, cigar or pipe, if the person extinguishes it; or
 - (b) in relation to an activated alternative smoking product, if the person deactivates it.
- (4) A person ***deactivates*** an activated alternative smoking product if the person stops the process mentioned in subsection (2) in relation to the product.
- (5) A reference in this Ordinance to marketing in relation to a smoking product includes marketing outside Hong Kong.
- (6) A note in the text of this Ordinance is for information only and has no legislative effect.”.

5. Section 3 amended (prohibition on smoking in certain designated areas)

(1) Section 3(2)—

Repeal

“shall smoke or carry a lighted cigarette, cigar or pipe”

Substitute

“may do a smoking act”.

(1A) Section 3(2A), Chinese text—

Repeal

“他吸煙”

Substitute

“該人吸用”.

(2) Section 3(3), after “contravening subsection (2)”—

Add

“in the no smoking area”.

(3) Section 3(3)—

Repeal paragraph (a)

Substitute

“(a) after indicating to the person that the person is doing a smoking act in the no smoking area in contravention of subsection (2), require the person to cease the act;”.

(4) Section 3(3)(b)—

Repeal

“extinguish the lighted cigarette, cigar or pipe,”

Substitute

“cease the smoking act.”.

- (5) Section 3(3)(b)(ii) and (c), Chinese text, before “禁止” (wherever appearing)—

Add

“該”.

6. Section 4 amended (prohibition on smoking in public transport carriers)

- (1) Section 4(1)—

Repeal

“shall smoke or carry a lighted cigarette, cigar or pipe”

Substitute

“may do a smoking act”.

- (2) Section 4(2)—

Repeal everything before paragraph (a)

Substitute

- “(2) The driver, conductor, ticket inspector, ticket collector or manager of any public transport carrier or any person authorized in that behalf by the manager may, in respect of any person who appears to be contravening subsection (1) in the public transport carrier—”.

- (3) Section 4(2)—

Repeal paragraph (a)

Substitute

- “(a) after indicating to the person that the person is doing a smoking act in the public transport carrier in contravention of subsection (1), require the person to cease the act;”.

- (4) Section 4(2)(b)—

Repeal

“extinguish the lighted cigarette, cigar or pipe,”

Substitute

“cease the smoking act.”.

7. Part 3 heading amended (sales of tobacco products)

Part 3, heading—

Repeal

“Tobacco”

Substitute

“Conventional Smoking”.

8. Section 8 amended (sales of cigarettes and tobacco products)

(1) Section 8, heading—

Repeal

“cigarettes and tobacco”

Substitute

“conventional smoking”.

(2) Section 8(2)(b)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

9. Section 8B amended (prohibition on sale of tobacco products from a vending machine)

(1) Section 8B, heading—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (2) Section 8B—

Repeal

“tobacco”

Substitute

“conventional smoking”.

10. Section 10 amended (offences under Part 3)

- (1) Section 10(3)—

Repeal

“tobacco” (wherever appearing)

Substitute

“conventional smoking”.

- (2) Section 10(3)(a), English text—

Repeal

“trademark” (wherever appearing)

Substitute

“trade mark”.

11. Section 10A amended (seizure and forfeiture)

- Section 10A(1)(ca)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

12. Part 4 heading amended (tobacco advertising)

Part 4, heading—

Repeal

“Tobacco Advertising”

Substitute

“Advertising of Smoking Products”.

13. Section 11 amended (tobacco advertisements in printed publications)

(1) Section 11, heading—

Repeal

“Tobacco”

Substitute

“Smoking product”.

(2) Section 11(1)—

Repeal

“tobacco”

Substitute

“smoking product”.

(3) Section 11—

Repeal subsection (3)

Substitute

“(3) Nothing in this section or section 12 applies in relation to a smoking product advertisement in a printed publication that is published—

(a) for the smoking products trade; or

- (b) as the in-house publication of any company engaged in that trade.”.

14. Section 12 amended (no display of tobacco advertisement)

- (1) Section 12, heading—

Repeal

“tobacco”

Substitute

“smoking product”.

- (2) Section 12(1)—

Repeal

“tobacco advertisement”

Substitute

“smoking product advertisement”.

- (3) Section 12(4)—

Repeal

“tobacco advertisement”

Substitute

“smoking product advertisement”.

- (4) Section 12(4)(a)—

Repeal subparagraph (i)

Substitute

“(i) of any manufacturer of conventional smoking products or any wholesale dealer dealing in conventional smoking products; and”.

- (5) Section 12(4)(a)(ii)—

Repeal

everything after “manufacturing of”

Substitute

“conventional smoking products or for the purpose of dealing by wholesale in conventional smoking products; and”.

- (6) Section 12(4)(b), Chinese text—

Repeal

“該等煙草”

Substitute

“該”.

- (7) Section 12(5)—

Repeal

“tobacco”.

15. Section 13 amended (prohibition on broadcast of tobacco advertisement by radio or visual images)

- (1) Section 13, heading—

Repeal

“tobacco”

Substitute

“smoking product”.

- (2) Section 13—

Repeal

“tobacco”

Substitute

“smoking product”.

16. Section 13A amended (prohibition on exhibition of tobacco advertisement by film)

(1) Section 13A, heading—

Repeal

“tobacco”

Substitute

“smoking product”.

(2) Section 13A(1)—

Repeal

“tobacco”

Substitute

“smoking product”.

17. Section 13B amended (prohibition on placing of tobacco advertisement on the Internet)

(1) Section 13B, heading—

Repeal

“tobacco”

Substitute

“smoking product”.

(2) Section 13B(1)—

Repeal

“tobacco”

Substitute

“smoking product”.

(3) Section 13B(2)(a), Chinese text—

Repeal

“電腦”.

- (4) Section 13B(3)—

Repeal

“tobacco”

Substitute

“smoking product”.

18. Section 14 amended (meaning of tobacco advertisement)

- (1) Section 14, heading—

Repeal

“tobacco”

Substitute

“smoking product”.

- (2) Section 14(1)—

Repeal

“tobacco advertisement”

Substitute

“smoking product advertisement”.

- (3) Section 14(1)(a)—

Repeal

“cigarettes, cigarette tobacco, cigars or pipe tobacco”

Substitute

“any smoking product”.

- (4) Section 14(1)(b)—

Repeal

“cigarettes, cigarette tobacco, cigars or pipe tobacco”

Substitute

“any smoking product”.

- (5) Section 14(1)(c)—

Repeal

“cigarettes, cigarette tobacco, cigars or pipe tobacco”

Substitute

“any smoking products”.

- (6) Section 14(1A)—

Repeal

“tobacco”

Substitute

“smoking product”.

- (7) Section 14(2)(b)—

Repeal

“tobacco”

Substitute

“smoking”.

- (8) Section 14(2)—

Repeal

“tobacco product, or any trade mark or brand name of a tobacco”

Substitute

“smoking product, or any trade mark or brand name of a smoking”.

- (9) Section 14(2)—

Repeal

“tobacco advertisement”

Substitute

“smoking product advertisement”.

- (10) Section 14(3)(a)(i)—

Repeal

“non-tobacco”

Substitute

“product or service that is not a smoking”.

- (11) Section 14(4)(a)—

Repeal

“tobacco”

Substitute

“smoking”.

- (12) Section 14(4)—

Repeal paragraph (b)

Substitute

“(b) any name identical to the trade name or brand name of any smoking product, in association with any product that is not a smoking product.”.

- (13) Section 14(4A)(c)—

Repeal

everything after “mention”

Substitute

“any word or phrase set out in Schedule 8 (including any word or phrase that means the same as, or closely resembles, the word or phrase).”.

- (14) Section 14(5)—

Repeal

“tobacco product” (wherever appearing)

Substitute

“smoking product”.

- (15) Section 14(5)—

Repeal

“tobacco advertisement”

Substitute

“smoking product advertisement”.

- (16) Section 14(6)—

Repeal

“tobacco products are offered for sale is not a tobacco”

Substitute

“conventional smoking products are offered for sale is not a smoking product”.

- (17) Section 14(6)(a)—

Repeal

“tobacco” (wherever appearing)

Substitute

“conventional smoking”.

- (18) Section 14(6)(a)(ii)(A)—

Repeal

“non-tobacco”

Substitute

“products that are not smoking”.

- (19) Section 14(6)(b)(i)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (20) Section 14(6)(b)(iii)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

19. Section 14A amended (removal and disposal of tobacco advertisement)

- (1) Section 14A, heading—

Repeal

“tobacco”

Substitute

“smoking product”.

- (2) Section 14A(1)—

Repeal

“tobacco”

Substitute

“smoking product”.

- (3) Section 14A(2)—

Repeal

everything after “disposal of any”

Substitute

“advertisement or structure removed under subsection (1), whether or not any person is convicted of any offence under

this Ordinance, on the grounds that an offence under this Ordinance has been or is being committed in relation to the advertisement or structure.”.

- (4) Section 14A(4)—

Repeal

everything after “brand of”

Substitute

“smoking product which is mentioned in the removed advertisement or structure or from the owner of the advertisement or structure.”.

20. Part 4A heading amended (prohibition on selling or giving of tobacco products)

Part 4A, heading—

Repeal

“Tobacco”

Substitute

“Conventional Smoking”.

21. Section 15A amended (prohibition on selling or giving of tobacco products, etc.)

- (1) Section 15A, heading—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (2) Section 15A(3)(a)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (3) Section 15A(3)(b)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (4) Section 15A(3)—

Repeal paragraph (c)

Substitute

“(c) give valuable consideration to any person in order to induce the person to buy a particular conventional smoking product or otherwise to promote the product to the person;”.

- (5) Section 15A(3)(d)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (6) Section 15A(3)(e)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (7) Section 15A(3)(f)—

Repeal

everything after “sale a”

Substitute

“product—

(i) that is not a smoking product; and

(ii) that includes or is accompanied by a conventional smoking product as a gift;”.

(8) Section 15A(3)(fa)—

Repeal

“tobacco product and a non-tobacco”

Substitute

“conventional smoking product and a product that is not a smoking”.

(9) Section 15A(3)(g)—

Repeal

“tobacco product”

Substitute

“conventional smoking product”.

22. Section 15B heading amended (display of sign when offering tobacco products for sale, etc.)

Section 15B, heading—

Repeal

“tobacco”

Substitute

“conventional smoking”.

23. Part 4AB added

After Part 4A—

Add

“Part 4AB

Prohibition of Alternative Smoking Products

15DA. Prohibition on import, manufacture or sale, etc.

- (1) No person may—
 - (a) import an alternative smoking product;
 - (b) manufacture an alternative smoking product;
 - (c) sell, or offer for sale, an alternative smoking product;
 - (d) give an alternative smoking product to another person—
 - (i) for promotion or advertisement;
 - (ii) in exchange for a token; or
 - (iii) as a prize in any event or competition;
 - (e) possess an alternative smoking product for—
 - (i) the manufacture of any other alternative smoking product;
 - (ii) sale; or
 - (iii) giving it to another person for the purpose mentioned in paragraph (d)(i), (ii) or (iii);
 - (f) give valuable consideration to another person in order to promote to the person an alternative smoking product; or

- (g) give another person an object that is intended to be shown in public, and that contains—
 - (i) the name or trade name of a person associated with the marketing of alternative smoking products; or
 - (ii) a trade mark or brand name of an alternative smoking product, or a pictorial device, or any part of the device, commonly associated with the trade mark or brand name.
- (2) A reference to the sale of an alternative smoking product in subsection (1)—
 - (a) includes the sale of any product that includes, or is accompanied by, an alternative smoking product as a gift; and
 - (b) does not include the sale of the product with a view to exporting the product.
- (3) For the purposes of subsection (1), an act is a promotion or advertisement in relation to a product if the act is a promotion or advertisement intended as an inducement to smoke, or encourage the use of, the product, whether or not a particular brand is mentioned.
- (4) Any person who contravenes subsection (1) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

Note—

Import and **export** are defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).

15DB. Liability of officers of bodies corporate

- ~~(1) If a body corporate commits an offence under section 15DA(4), and it is proved that the offence~~

- (a) was committed with the consent or connivance of an officer of the body corporate; or
- (b) is attributable to any neglect on the part of an officer of the body corporate,
the officer also commits the offence.
- (2) In subsection (1)—
- officer* (高級人員) means—
- (a) a director, manager, secretary or other similar officer of the body corporate; or
- (b) a person purporting to act in the capacity of a person referred to in paragraph (a).

15DB. Liability of officers of bodies corporate, partners and members of unincorporated bodies

- (1) If a body corporate commits an offence under section 15DA(4), and it is proved that the offence—
- (a) was committed with the consent or connivance of a person specified in subsection (2); or
- (b) is attributable to any neglect on the part of the person,
the person also commits the offence.
- (2) The person referred to in subsection (1) is—
- (a) a director, manager, secretary or other similar officer of the body corporate; or
- (b) a person purporting to act in the capacity of a person referred to in paragraph (a).
- (3) If a partner in a partnership commits an offence under section 15DA(4), and it is proved that the offence—

(a) was committed with the consent or connivance of a person specified in subsection (4); or

(b) is attributable to any neglect on the part of the person,

the person also commits the offence.

(4) The person referred to in subsection (3) is—

(a) any other partner in the partnership or any other person concerned in the management of the partnership; or

(b) a person purporting to act in the capacity of a person referred to in paragraph (a).

(5) If a member of any other unincorporated body commits an offence under section 15DA(4), and it is proved that the offence—

(a) was committed with the consent or connivance of a person specified in subsection (6); or

(b) is attributable to any neglect on the part of the person,

the person also commits the offence.

(6) The person referred to in subsection (5) is—

(a) any other member, or any manager, secretary or other similar officer, of the unincorporated body; or

(b) a person purporting to act in the capacity of a person referred to in paragraph (a).

15DC. Exemption for persons in transit at Hong Kong International Airport

Section 15DA(1)(a) does not apply to a person who—

(a) arrives at the Hong Kong International Airport from a place outside Hong Kong; and

- (b) while in Hong Kong, does not pass through any immigration control.

15DD. Exemption for articles in transit or air transhipment cargos

- (1) Section 15DA(1)(a) does not apply in relation to an alternative smoking product that is an article in transit or air transhipment cargo.
- (2) However, section 15DA(1)(a) does apply in relation to an alternative smoking product if, at any time between its being brought into and taken out of Hong Kong—
 - (a) for an article in transit on an aircraft—the product is removed from the aircraft other than in the specified cargo transhipment area;
 - (b) for an article in transit in a vessel—the product is removed from the vessel; or
 - (c) for an air transhipment cargo—the product is removed from the specified cargo transhipment area.
- (3) If section 15DA(1)(a) applies in relation to a product because of subsection (2), for the purposes of the application—
 - (a) the product is deemed to be imported at the time of the removal mentioned in subsection (2); and
 - (b) the person who brought the product, or caused it to be brought, into Hong Kong as an article in transit or air transhipment cargo is deemed to be the person who imported the product.
- (4) It is a defence for a person mentioned in subsection (3)(b) who is charged under section 15DA(4) in relation to importing a product to show that the person took all

reasonable steps and exercised reasonable diligence to avoid the removal mentioned in subsection (2).

- (5) Subsection (6) applies if a defence under subsection (4) involves an allegation that the offence was committed because of—
 - (a) another person's act or default; or
 - (b) the defendant's reliance on information given by another person.
- (6) Without the leave of the court, the defendant may not rely on the defence unless, at least 10 days before the hearing of the proceedings, the defendant has served a written notice on the prosecutor giving particulars of—
 - (a) the person who allegedly committed the act or default, or allegedly gave the information; and
 - (b) the act, default or information concerned, of which the defendant is aware at the time the notice is served.
- (7) The defendant may not rely on a defence under subsection (4) claiming that the offence was committed because of the defendant's reliance on information given by another person unless the defendant shows that the reliance was reasonable in all the circumstances, having regard in particular to—
 - (a) the steps that the defendant took, and those which might reasonably have been taken, for verifying the information; and
 - (b) whether the defendant had any reason to disbelieve the information.
- (8) In this section—

air transhipment cargo (航空轉運貨物) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60);

article in transit (過境物品) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60);

specified cargo transhipment area (指明貨物轉運區) means—

- (a) any part of the Hong Kong International Airport that is designated under section 35 of the Aviation Security Ordinance (Cap. 494) as a restricted area; or
- (b) an area approved by the Commissioner of Customs and Excise under section 2AA of the Import and Export Ordinance (Cap. 60).

15DE. Exception for Government Chemists

Despite section 15DA, a Government Chemist may import an alternative smoking product so far as it is necessary for the performance of the Government Chemist's functions.

15DF. Relationship with Pharmacy and Poisons Ordinance

- (1) This Part does not limit the Pharmacy and Poisons Ordinance (Cap. 138).
- (2) If an alternative smoking product is registered as a pharmaceutical product under regulation 36 of the Pharmacy and Poisons Regulations (Cap. 138 sub. leg. A), other provisions of this Part do not apply in relation to the product.

15DG. Enforcement powers of inspectors

- (1) An inspector may seize, remove or detain any article if the inspector reasonably suspects that—

- (a) the article is an alternative smoking product; and
 - (b) an offence under section 15DA(4) has been committed, is being committed or is about to be committed in respect of the article.
- (2) If an inspector reasonably suspects that a person has committed or is committing an offence under section 15DA(4), the inspector may detain the person for a reasonable period to facilitate the enforcement of section 15DA.
- (3) A magistrate may issue a warrant empowering an inspector named in the warrant to at any time enter any place that is neither a public place nor a domestic premises if it appears to the magistrate from information on oath that there is reasonable cause for suspecting that an offence under section 15DA(4) has been committed, is being committed or is about to be committed in that place.
- (4) In exercising a power under subsection (1) or (2), or under a warrant mentioned in subsection (3), an inspector must, if requested, produce proof of his or her authority as an inspector.
- (5) This section does not limit section 15G(1)(c), (d), (e), (f), (g) or (h).

15DH. Enforcement powers of Customs and Excise officers

- (1) For the enforcement of section 15DA in relation to an import offence, a Customs and Excise officer—
- (a) may stop and search a person arriving in Hong Kong, and search anything in the person's possession;
 - (b) may stop, board and search any transport carrier arriving in Hong Kong;

- (c) may, at any point of entry to Hong Kong, examine any article (including cargo, unaccompanied baggage or unaccompanied personal belongings) that is not contained in a postal packet; and
 - (d) may, in the presence of, and under the directions of, an officer of the Post Office, open and examine any postal packet.
- (2) A person searched under subsection (1)(a)—
- (a) may only be searched by a person of the same sex; and
 - (b) may not be searched in a public place if the person objects to being so searched.
- (3) A Customs and Excise officer may seize, remove or detain any article if the officer reasonably suspects that—
- (a) the article is an alternative smoking product; and
 - (b) an import offence has been committed or is being committed in respect of the article.
- (4) Any article seized, removed or detained under subsection (3) may be retained in the custody of a Customs and Excise officer until it is transferred to an inspector for the enforcement of section 15DA.
- (5) If a Customs and Excise officer reasonably suspects that a person has committed or is committing an import offence, the officer—
- (a) to facilitate the enforcement of section 15DA in relation to the offence, may detain the person for a reasonable period; and
 - (b) may arrest the person without warrant.

(6) A Customs and Excise officer may use any force reasonably necessary for exercising a power under this section.

(7) In this section—

Customs and Excise officer (海關人員) means a person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342);

import offence (進口罪行) means an offence under section 15DA(4) for the contravention of section 15DA(1)(a);

officer of the Post Office (郵政署人員) has the meaning given by section 2(1) of the Post Office Ordinance (Cap. 98);

postal packet (郵包) has the meaning given by section 2(1) of the Post Office Ordinance (Cap. 98);

transport carrier (交通工具) includes an aircraft, vehicle, vessel or train, and any other means of travel or transport.”.

24. Section 15H amended (disposal of property seized by inspectors)

(1) Section 15H—

Renumber the section as section 15H(1).

(2) After section 15H(1)—

Add

“(2) For the purposes of subsection (1), an article transferred to an inspector as mentioned in section 15DH(4) is regarded as an article seized by the inspector.”.

25. Section 19 repealed (transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006)

Section 19—

Repeal the section.

26. Schedule 2 amended (designated no smoking areas and exempt areas)

- (1) Schedule 2, Part 2, item 10—

Repeal

everything after “designated for” and before “if”

Substitute

“tasting or testing of smoking products in the manufacturing or business premises of a business engaged in the smoking products trade”.

- (2) Schedule 2, Part 2, item 10, paragraph (a)—

Repeal

“tobacco”

Substitute

“smoking”.

- (3) Schedule 2, Part 2, item 10—

Repeal paragraph (b)

Substitute

“(b) the tasting or testing is carried out for conducting research and development or quality control of smoking products in the normal course of the business;”.

- (4) Schedule 2, Part 2, item 10, paragraph (c)—

Repeal

“tobacco tasting”

Substitute

“tasting or testing”.

- (5) Schedule 2, Part 2, item 10, paragraph (e)—

Repeal

“tobacco tasting, is required to enter the room while it is being occupied for the tobacco tasting”

Substitute

“tasting or testing, is required to enter the room while it is being occupied for the tasting or testing”.

- (6) Schedule 2, Part 2, after item 11—

Add

“12. A Government laboratory.”.

27. Schedule 5 amended (exemption from section 3(2) of this Ordinance)

- (1) Schedule 5, section 1(1)—

Repeal the definition of *smoking act*.

- (2) Schedule 5, section 1(1)—

Add in alphabetical order

“***conventional smoking act*** (傳統吸煙行為) means smoking or carrying a lighted cigarette, cigar or pipe;”.

- (3) Schedule 5, section 2—

Repeal

“a smoking act”

Substitute

“a conventional smoking act”.

- (4) Schedule 5, section 2(a) and (c), before “smoking act”—

Add

“conventional”.

- (5) Schedule 5, section 2(e), before “smoking act”—

Add

“conventional”.

- (6) Schedule 5, Chinese text, section 2(e)—

Repeal

“該等動作”

Substitute

“傳統吸煙行為”.

- (7) Schedule 5, section 3—

Repeal

“a smoking act”

Substitute

“a conventional smoking act”.

- (8) Schedule 5, section 3(a), before “smoking act”—

Add

“conventional”.

- (9) Schedule 5, section 3(c)—

Repeal

“tobacco”

Substitute

“smoking product”.

- (10) Schedule 5, section 3(d), before “smoking act”—

Add

“conventional”.

- (11) Schedule 5, section 3(f), before “smoking act”—

Add

“conventional”.

- (12) Schedule 5, Chinese text, section 3(f)—

Repeal

“該等動作”

Substitute

“傳統吸煙行為”.

- (13) Schedule 5, section 4, heading, before “smoking”—

Add

“conventional”.

- (14) Schedule 5, section 4, before “smoking act”—

Add

“conventional”.

- (15) Schedule 5, section 4(a)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (16) Schedule 5, Chinese text, section 4(a)—

Repeal

“動作”

Substitute

“行為”.

- (17) Schedule 5, section 4(b)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (18) Schedule 5, Chinese text, section 4(b)—

Repeal

“動作”

Substitute

“行為”.

- (19) Schedule 5, Chinese text, section 4(b)—

Repeal

“推廣”

Substitute

“提倡”.

- (20) Schedule 5, section 4(c)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (21) Schedule 5, Chinese text, section 4(c)—

Repeal

“動作”

Substitute

“行為”.

- (22) Schedule 5, section 4(d)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (23) Schedule 5, Chinese text, section 4(d)—

Repeal

“動作”

Substitute

“行為”.

(24) Schedule 5, Chinese text, section 4(d)—

Repeal

“品質”

Substitute

“特質”.

28. Schedule 6 repealed (transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006)

Schedule 6—

Repeal the Schedule.

29. Schedules 7 and 8 added

The Ordinance—

Add

“Schedule 7

[s. 2(1)]

Alternative Smoking Products

Part 1

Interpretation Provisions

1. In this Schedule—

conventional smoking (傳統吸煙) means the smoking of a cigarette, cigar or pipe;

dangerous drug (危險藥物) has the meaning given by section 2(1) of the Dangerous Drugs Ordinance (Cap. 134);

specified plant material (指明植物材料) means any material—

- (a) that was any part of a plant, such as leaves, roots, flowers, fruit and seeds; and
- (b) that is not tobacco or a dangerous drug;

waterpipe (水煙壺) means a receptacle or other device designed for use for smoking tobacco in a form other than as a cigarette or cigar where the receptacle or device—

- (a) allows smoke to be generated other than by means of electricity; and
- (b) consists of or includes a jar or similar receptacle for containing a liquid through which the smoke of tobacco would pass before being inhaled by the user of the receptacle or device.

2. For the purposes of this Schedule, it is irrelevant whether the aerosol generated is visible.
3. For the purposes of this Schedule, a thing is capable of use for imitating conventional smoking if it is capable of use for smoking in the same way as conventional smoking in respect of—
 - (a) the bringing of the thing to the mouth; and
 - (b) the inhaling and expelling of aerosol.
4. For the purposes of this Schedule, it is irrelevant whether the component or accessory is sold separately from the device.

Part 2

Products for Definition of *Alternative Smoking Product*

Category 1

- 1.1. A device (other than a waterpipe) that is capable of—
 - (a) generating an aerosol from any substance that is not tobacco or a dangerous drug, other than by means of lighting the substance directly; and
 - (b) use for imitating conventional smoking.
- 1.2. A thing that is designed for use as a component of, or accessory to, a device described in item 1.1 (such as a mouthpiece, heating element, battery or container of a substance mentioned in that item).
- 1.3. Any substance (other than tobacco or a dangerous drug)—
 - (a) that is packaged as being suitable for use with a device described in item 1.1; and
 - (b) from which an aerosol is capable of being generated in the way described in that item.

Category 2

- 2.1. A device (other than a waterpipe) that is capable of—
- (a) generating an aerosol from tobacco, other than by means of lighting the tobacco directly; and
 - (b) use for smoking.
- 2.2. A thing that is designed for use as a component of, or accessory to, a device described in item 2.1 (such as a mouthpiece, heating element, battery or container of the tobacco mentioned in that item).
- 2.3. Tobacco—
- (a) that is packaged as being suitable for use with a device described in item 2.1; and
 - (b) from which an aerosol is capable of being generated in the way described in that item.

Category 3

3. Specified plant material rolled up in any material, in a form that is capable of immediate use for imitating conventional smoking.
-

Schedule 8

[s. 14(4A)(c)]

Words or Phrases for Section 14(4A)(c)

cigarette
smoking
tobacco
cigar
pipe
waterpipe
hookah
shisha
vaping
vaporizer
e-cigarette
e-cig
electronic nicotine delivery system
ENDS
electronic non-nicotine delivery system
ENNDS
e-liquid
e-juice
heat-not-burn
HNB

heatstick

HTP

香煙

捲煙

吸煙

煙草

煙絲

雪茄

煙斗

水煙

電子煙

電子尼古丁傳送系統

電子非尼古丁傳送系統

煙油

煙液

加熱煙

加熱非燃燒

草本煙

草藥煙

藥草煙

茶煙

水果煙

果味煙

有味煙”.

Part 3

Related and Consequential Amendments

Division 1—Amendment to Dutiable Commodities Ordinance (Cap. 109)

30. Section 3 amended (application)

Section 3(1)—

Repeal paragraph (b)

Substitute

“(b) tobacco other than—

- (i) any smokeless tobacco product as defined by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132); or
- (ii) any alternative smoking product as defined by section 2(1) of the Smoking (Public Health) Ordinance (Cap. 371);”.

Division 2—Amendments to Smoking (Public Health) Regulations (Cap. 371 sub. leg. A)

31. Regulation 3 amended (determination by the Government Chemist)

(1) Regulation 3—

Renumber paragraph (i) as paragraph (c).

(2) Regulation 3(c)—

Repeal

“tobacco”

Substitute

“smoking product”.

- (3) Regulation 3—

Renumber paragraph (ii) as paragraph (d).

32. **Regulation 7 amended (exemption of certain advertisements from Part 4 of the Ordinance)**

Regulation 7—

Repeal

“tobacco”

Substitute

“smoking product”.

Division 3—Amendments to Smoking (Public Health) (Prescribed Information) Order (Cap. 371 sub. leg. B)

33. **Paragraph 5A amended (health warning on price board of tobacco products)**

- (1) Paragraph 5A, heading—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (2) Paragraph 5A(1)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

34. Paragraph 8 heading amended (sign when offering tobacco products for sale, etc.)

Paragraph 8, heading—

Repeal

“tobacco”

Substitute

“conventional smoking”.

35. Schedule amended

(1) Schedule, Part 2, heading—

Repeal

“Tobacco”

Substitute

“Conventional Smoking”.

(2) Schedule, Part 2A, heading—

Repeal

“Tobacco”

Substitute

“Conventional Smoking”.

(3) Schedule, Part 3A, heading—

Repeal

“FORM OF HEALTH WARNING ON PRICE BOARD OF TOBACCO PRODUCTS”

Substitute

“Form of Health Warning on Price Board of Conventional Smoking Products”.

(4) Schedule, Part 6, heading—

Repeal

“SIGN WHEN OFFERING TOBACCO PRODUCTS FOR
SALE, ETC.”

Substitute

**“Sign When Offering Conventional Smoking Products for
Sale, etc.”.**
